79-946

Supreme Court, U. S.
FILED
DEC 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-

WILLIARD C. RAMEY,

Petitioner,

v.

RUBY RAMEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

J. D. TODD, JR.
Post Office Box 2248
Greenville, South Carolina 29602

FELIX L. FINLEY, JR.
Post Office Box 543
Pickens, South Carolina 29671

Attorneys for Petitioner

TABLE OF AUTHORITIES

Cases: Page

Behrns v. Burke, 229 N.W.2d 86 (S.D. 1975) 6
Brown v. Merlo, 506 P.2d 212 (Cal. 1973) 6
Cannon v. Oviatt, 520 P.2d 883 (Utah 1974) 6
Cannon v. Oviatt, 419 U.S. 810, 95 S.Ct. 24, 42 L.Ed.2d 37 4
Delaney v. Badame, 49 Ill.2d 168, 274 N.E.2d 353 6
Durest v. Limbocker, 269 Ore. 252, 525 P.2d 99 6
Henry v. Bauder, 518 P.2d 362 (Kan. 1974) 6
Hicks v. Miranda, 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223 4
Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974) 6
Justice v. Gatchell, 325 A.2d 97 (Del. 1974) 6
Keasling v. Thompson, 217 N.W.2d 687 (Iowa 1974) 6
Laakowen v. Eighth Judicial District Court, 583 P.2d 574 (Nev.1975)..... 6
Manistee Bank & Trust Co. v. McGowan, 232 N.W.2d 636 (Mich. 1975) 6
McKeehan v. Bunch, 540 P.2d 238 (N.M. 1975)..... 6
Minnesota v. National Tea Co., 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940) 4, 5
Nehring v. Russell, 582 P.2d 67 (Wy. 1978) 6
Primes v. Tyler, 331 N.E.2d 723 (Ohio 1975) 6
Second Employers Liability Cases, 223 U.S. 1, 32 S. Ct. 169, 56 L.Ed. 327..... 5
Sidle v. Majors, 429 U.S. 945, 97 S.Ct. 366, 50 L.Ed.2d 316 (1976) 3, 6
Silver v. Silver, 108 Conn. 371, 143 A. 240 3
Silver v. Silver, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed.2d 221 (1929) 2,3
Thompson v. Hagan, 523 P.2d 1365 (Idaho 1974) 6
Tisko v. Harrison (Civ. App. Texas) 500 S.W.2d 565 6
White v. Hughes, 257 Ark. 627, 519 S.W.2d 70 6

Constitutional and Statutory Provisions:

28 U.S.C. 1257(3) 2
U.S. Const., Amend, XIV, Sec. 1..... 2
U.S. Const., Art. VI, Sec. 2..... 5
S.C. Const., Art. I, Sec. 3, Constitution of 1895.....4

TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provisions Involved	2
Statement of the Case	2
Why The Writ Should Be Granted	3
Conclusion	7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-

WILLIARD C. RAMEY,
Petitioner,
v.
RUBY RAMEY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

Williard C. Ramey respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of South Carolina in the above-entitled case.

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina (App. 8) is reported at 258 S.E. 2d 883, S.C. The Order of the Supreme Court of South Carolina denying rehearing (App. 17) is not reported. The opinion of the Court of Common Pleas of Pickens County, South Carolina (App. 18) is not reported.

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered on September 5, 1979. The Order of the Supreme Court

of South Carolina denying a timely petition for rehearing was entered on October 11, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

I. Did the Supreme Court of South Carolina in Holding the South Carolina Guest Statute Unconstitutional as Violative of the Equal Protection Guarantees of the Fourteenth Amendment to the Constitution of the United States Decide a Substantial Question of Federal Law in a Manner Not in Accord With the Holding of this Court in *Silver v. Silver*, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed.2d 221 (1923)?

II. Because of the Recent Conflict Among State and Federal Courts as to the Constitutionality of Various Guest Statutes Should this Court Give Plenary Consideration to Such Constitutional Conflicts?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. XIV, Sec. 1:

> * * * nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Ruby Ramey, the respondent herein, brought this personal injury action against her husband, Williard C. Ramey, for injuries allegedly sustained by her while riding as a guest passenger in a motor vehicle owned and operated by the petitioner, her husband. In his Answer the petitioner pleaded that the accident was not intentional on his part and denied that he was guilty of any reckless, wilful or wanton misconduct in the operation of the automobile within the meaning of the South Carolina Guest Statute. Plaintiff moved to strike those allegations relevant to Guest Statute on the grounds that same is inherently unconstitutional and violative of the equal protection clause of the Constitution of the United States and the

Constitution of the State of South Carolina. On August 15, 1978, Honorable Robert W. Hayes, Judge of the Court of Common Pleas of Pickens County, South Carolina, granted such motion to strike, holding that the South Carolina Guest Statute was unconstitutional and violative of the equal protection clause in the United States Constitution and the Constitution of the State of South Carolina. There was no testimony of any kind before the Circuit Judge, nor was any factual showing of any kind made. The Supreme Court of South Carolina in a 3 to 2 decision affirmed the judgment of the Court of Common Pleas that the South Carolina Guest Statute was violative of the equal protection guarantees and inherently unconstitutional.

The South Carolina Guest Statute was adopted by the General Assembly in 1930. It was an exact copy of the Connecticut Guest Statute, which had been held constitutional not only by the Supreme Court of Connecticut in *Silver v. Silver*, 108 Conn. 371, 143 A. 240, but also by this Court, *Silver v. Silver*, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, 65 A.L.R. 939. The decision of this Court in *Silver v. Silver* was rendered on November 25, 1929, and the following year the South Carolina Guest Statute was passed. Despite its almost 50 years of history, the constitutionality of the South Carolina Guest Statute has never been raised prior to this case.

WHY THE WRIT SHOULD BE GRANTED

I

The Supreme Court of South Carolina Decided a Substantial Federal Question in a Way Contrary to the Decision of This Court in Silver v. Silver, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, 65 A.L.R. 939.

In 1929 this Court held that the Connecticut guest statute was not violative of the Equal Protection Clause of the Federal Constitution, and for 50 years that decision has been unchanged. *Silver v. Silver*, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, 65 A.L.R. 939. In *Sidle v. Majors*, 429 U.S. 945, 97 S.Ct. 366, 50 L.Ed.2d 316, this Court denied petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit. The petition for such writ presented the question of

whether or not the Indiana motor vehicle guest statute violated the Equal Protection Clause of the Fourteenth Amendment. The Seventh Circuit held that its considered view was that the Indiana statute was unconstitutional but sustained the statute because of the case of *Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223, and the case of *Cannon v. Oviatt*, 419 U.S. 810, 95 S.Ct. 24, 42 L.Ed.2d 37. This, it is submitted, is a re-affirmance of the *Silver* decision, and the Supreme Court of South Carolina, in holding that the self-same guest statute[1] which was held constitutional in *Silver* was unconstitutional under the Federal Constitution, decided a Federal issue in a manner not in keeping with the decisions of this Court.

It might be argued that the Supreme Court of South Carolina likewise found the South Carolina guest statute unconstitutional as violative of the Equal Protection Clause of the South Carolina Constitution and this it had a right to do. *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940). However, the Equal Protection Clause of the South Carolina Constitution is in all material particulars identical with the Equal Protection Clause of the Federal Constitution.

The Equal Protection Clause of the South Carolina Constitution is found in Article I, Section 3, of the Constitution of 1895 and is as follows:

> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

To reach a conclusion, as did the Supreme Court of South Carolina in this case, that the South Carolina Guest Statute violated the Equal Protection Clause of the South Carolina Constitution, which in all material respects is identical with the Equal Protection Clause of the Federal Constitution, is to run

[1]The South Carolina Guest Statute is identical to the Connecticut guest statute and was adopted within a few months after this Court held the Connecticut statute constitutional on November 25, 1929.

directly afoul of the Supremacy Clause of the Federal Constitution, Article VI, Section 2. This is especially true where, as here, this Court has construed the very act here involved to be not violative of the Federal Constitution. A state constitution is of no effect where it is in conflict with the Constitution of the United States. *Second Employers Liability Cases*, 223 U.S. 1, 32 S.Ct. 169, 56 L.Ed. 327.

The Supreme Court of South Carolina makes no attempt to distinguish the Equal Protection Clause in the South Carolina Constitution from the Equal Protection Clause in the Federal Constitution, and indeed it could not do so. It is essential for the orderly administration of justice that there be preserved a uniformity of construction of the Federal Constitution, and the ruling of the Supreme Court of South Carolina holding the guest statute violative of the Equal Protection Clause of the State and Federal Constitutions violates that necessary uniformity. The Supreme Court of South Carolina was bound by the Opinion of this Court in *Silver v. Silver, supra*.

The validity of a state constitutional provision depends upon its conformity with Federal constitutional provisions. Permissible state constitutional provisions are always subject to the limitation that such provisions not violate the Federal Constitution.

It was beyond the power of the Supreme Court of South Carolina to hold the South Carolina Guest Statute violative of the Federal Constitution in view of *Silver v. Silver, supra*.

With regard to the guest statute's claimed violation of the Equal Protection Clause of the South Carolina Constitution, the Court below gives no hint as to why the statute would violate the State Constitution as compared to the Federal Constitution. As was said in *Minnesota v. National Tea Company*, 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940):

> On the other hand, it did not declare its independence of the decisions of this Court when the state constitutional provision avowedly had identity of scope with the relevant clause of the Fourteenth Amendment.

II

Because of the Conflict Among State and Federal Courts Over the Constitutionality of Various Guest Statutes.

In the majority Opinion below the Court stated, "In recent years, nine states have held their guest statutes unconstitutional despite the decision of the United States Supreme Court in *Silver v. Silver*, 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221 (1929)." Those cases holding various guest statutes unconstitutional were collected in footnote 2 of the Opinion and are as follows: "*Nehring v. Russell*, 582 P.2d 67 (Wy. 1978); *Manistee Bank & Trust Co. v. McGowan*, 232 N.W. 2d 636 (Mich. 1975); *Primes v. Tyler*, 331 N.E.2d 723 (Ohio 1975); *Laakowen v. Eighth Judicial District Court*, 538 P.2d 574 (Nev. 1975); *McKeehan v. Bunch*, 540 P.2d 238 (N. M. 1975); *Thompson v. Hagan*, 523 P.2d 1365 (Idaho 1974); *Henry v. Bauder*, 518 P.2d 362 (Kan. 1974); *Johnson v. Hassett*, 217 N.W.2d 771 (N. D. 1974); *Brown v. Merlo*, 506 P.2d 212 (Cal. 1973)." Although the Court below failed to list them, there are numerous modern decisions from Courts of last report holding guest statutes constitutional. We cite *Behrns v. Burke*, 229 N.W.2d 86 (S.D. 1975); *White v. Hughes*, 257 Ark. 627, 519 S.W. 2d 70; *Richardson v. Hansen*, 186 Colo. 346, 527 P.2d 536; *Durest v. Limbocker*, 269 Ore. 252, 525 P.2d 99; *Cannon v. Oviatt*, 520 P.2d 883 (Utah 1974); *Keasling v. Thompson*, 217 N.W.2d 687 (Iowa 1974); *Justice v. Gatchell*, 325 A.2d 97 (Del. 1974); *Tisko v. Harrison* (Civil App., Texas) 500 S.W. 2d 565; and *Delany v. Badame*, 49 Ill. 2d 168, 274 N.E.2d 353, all cases in which guest statutes have recently been held not unconstitutional. Many of the cases holding a State guest statute as unconstitutional have been held unconstitutional under both Federal and State law despite *Silver v. Silver, supra.* In view of the widespread divergence among State Courts as to the constitutionality or unconstitutionality of guest statutes under the Federal Constitution, it would seem appropriate for this Court to grant certiorari so that it might, as stated by Mr. Justice Brennan in his dissenting Opinion in *Sidle v. Majors*, 429 U.S. 945, 97 S.Ct. 366, 50 L.Ed.2d 316 (1976), "give plenary consideration to the constitutional issue that has stirred such conflict among state and lower federal courts."

It is respectfully submitted that to allow this decision to stand would allow the Supreme Court of South Carolina to be the final arbiter of an important equal protection question under the Federal Constitution which question has received varying and conflicting answers in the State Courts which have passed upon it.

CONCLUSION

For all the reasons stated above, it is respectfully submitted the writ should issue to the Supreme Court of South Carolina.

Respectfully submitted,

J. D. TODD, JR.
Post Office Box 2248
Greenville, South Carolina 29602

FELIX L. FINLEY, JR.
Post Office Box 543
Pickens, South Carolina 29671

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ruby Ramey ..... *Respondent,*

v.

Williard C. Ramey ..... *Appellant.*

Appeal From Pickens County
Robert W. Hayes, *Judge*

Opinion No. 21059
Filed September 25, 1979

AFFIRMED

J. D. Todd, Jr., of Leatherwood, Walker, Todd & Mann, of Greenville; and Felix L. Finley, Jr., of Finley, Ponder & Warlick, of Pickens, *for appellant.*
Michael Parham, of Abrams, Bowen, Robertson, Tapp & Parham, of Greenville, *for respondent.*
Amicus Curiae: Joel D. Bailey, of Beaufort, for *S.C. Trial Lawyers Association.*

NESS, A. J.: Respondent, Ruby Ramey, challenges the constitutionality of the South Carolina Guest Statute, § 15-1-290, Code of Laws of South Carolina (1976). We conclude the statute violates the equal protection guarantees of the South Carolina and United States Constitutions.

Respondent sued her husband, Williard, for personal injuries sustained by her while a non-paying guest passenger in his motor vehicle. In his answer the appellant, Williard Ramey, alleged that the accident was not intentional on his part and denied that he was guilty of any reckless, wilful, or wanton misconduct in the operation of his automobile within the meaning of the South Carolina Guest Statute. The gravamen of this section is to require a non-paying guest to prove more than simple negligence as a basis of recovery.

The lower court granted plaintiff's motion to strike, holding that the guest statute was inherently unconstitutional be-

cause there was "no rational justification for singling out persons injured in automobile accidents as different from all others injured in negligent torts —." (Tr. p.10). We affirm.

The text of the statute is as follows:

" §15-1-290. Liability for injury to guests in car.

"No person transported by an owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action against such motor vehicle or its owner or operator for injury, death or loss in case of an accident unless such accident shall have been intentional on the part of such owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

"This section shall not relieve a public carrier or any owner or operator of a motor vehicle which is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger while being transported by such public carrier or while such motor vehicle is being so demonstrated."

The sole question for determination by this Court is set out in appellant's brief as follows:

"Is § 15-1-290 of the South Carolina Code of Laws (the South Carolina Guest Statute) inherently unconstitutional as being violative of Article I, Section 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment to the Constitution of the United States?" (Appellant's Brief, p. 5).

The Fourteenth Amendement to the United States Constitution reads:

"All persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens and residents of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or prop-

erty without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Prior to the enactment of the guest statute in 1930, the common law imposed a duty of reasonable care on those who transported non-paying guests. This standard of care was altered by the guest statute which rendered a gratuitous guest's recovery contingent upon a showing of intentional or reckless misconduct by the host driver.

Between 1927 and 1939, twenty-seven states enacted versions of the guest statute, ostensibly to promote the following two goals: (1) the protection of host drivers from suits by ungrateful guests; and (2) the elimination of collusive lawsuits. With the advent of widespread automobile liability insurance, however, there has been increasing criticism of the guest statute in both academic and judicial forums.[1] Judicial tribunals have questioned whether guest statutes actually serve to further the twin goals which spurred their enactment. In recent years, nine states have held their guest statutes unconstitutional[2] despite the decision of the United States Supreme Court in *Silver v. Silver*, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221 (1929).[3]

In *Silver*, the Supreme Court considered whether the

[1]See, E.G., Prosser, Law of Torts, 4th Ed., pp. 186, 187; 35 ATLA Law Journal 46 et seq.; 36 ATLA Law Journal 36 et seq.; Lascher, "Hard Laws Make Bad Cases — Lots of Them (The California Guest Statute)", 1968, 9 Santa Clara Law 1; Gibson, "Guest Passengers Discrimination," 1968, 6 Alberta L. Rev. 211; Note, "The Case Against the Guest Statute," 1966, 7 Wm. & Mary L. Rev. 321; Weinstein, "Should We Kill the Guest Passenger Act," 1965, 33 U. Det. L. Rev. 185; Allen, "Why Do Courts Coddle Insurance Companies," 1927, 61 Am. L. Rev. 77; *Brown v. Merlo*, 506 P. 2d 212 (Cal. 1973); *Clark v. Clark*, 222 A. 2d 205 (N.H. 1966); *Stevens v. Stevens*, 94 N.W. 2d 858 (Mich. 1959); *Hewlett v. Schadel* (4th Cir. 1934), 68 F. 2d 502.

[2]*Nehring v. Russell*, 582 P. 2d 67 (Wy. 1978); *Manistee Bank & Trust Co. v. McGowan*, 232 N.W. 2d 636 (Mich. 1975); *Primes v. Tyler*, 331 N.E. 2d 723 (Ohio 1975) *Laakowen v. Eighth Judicial District Court*, 538 P. 2d 574 (Nev. 1975); *McKzehan v. Bunch*, 540 P. 2d 238 (N.M. 1975); *Thompson v. Hagan*, 523 P. 2d 1365 (Idaho 1974); *Henry v. Bauder*, 518 P. 2d 362 (Kan. 1974); *Johnson v. Hassett*, 217 N.W. 2d 771 (N.D. 1974); *Brown v. Merlo*, 506 P. 2d 212 (Cal. 1973).

[3]The constitionality of the South Carolina guest statute has not been raised heretofore.

Connecticut guest statute impermissibly distinguished gratuitous passengers in automobiles from those in other classes of vehicles. In upholding the statute's constitutionality, the Court stated:

> " [I]t is not so evident that no grounds exist for the distinction that we can say a priori that the classification is one forbidden as without basis, and arbitrary." 280 U.S. at 123.

The *Silver* case is distinguishable as it did not consider the two historical justifications for the guest statute to determine if there was a rational connection between the objectives of the statute and the means provided to accomplish the objectives. Moreover, in *Silver*, the plaintiff attacked the statute solely on the ground that the distinction drawn between automobile guests and guests in other conveyances was impermissible. In rejecting this limited argument, the *Silver* Court approached the guest statute simply as one of the many automobile regulatory measures then being enacted. As noted by the Supreme Court of Idaho in a recent decision rejecting the constitutionality of that state's guest statute:

> "The *Silver* case appears to have taken the approach that all regulations of automobiles are constitutional without examining the regulations in detail." *Thompson v. Hagan*, 523 P. 2d 1365, 1370 (Idaho 1974).

Our view parallels those of other courts which have held their guest statutes unconstitutional. The 1929 *Silver* decision is neither persuasive nor controlling due to its limited scope.

The prevailing equal protection standard is whether a legislative classification which excludes a certain class of persons is rationally related to the object of the statute. *Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971); *Marley v. Kirby*, 271 S.C. 122, 245 S.E. 2d 604 (1978).[4] As stated earlier, two distinct justifications — (1) the protection of

[4]As "guest" is not defined in the statute and is left entirely for the courts to decide on a case by case basis, it is insufficient to say we are dealing with a legislative classification.

hospitality and (2) the elimination of collusive lawsuits — have traditionally been proffered to support the guest statute. Upon analysis, neither justification constitutes a rational basis for the differential treatment spawned by the statute.

First, the "protection of hospitality" rationale does not justify the statute's differential treatment of *automobile* guests[5] as distinguished from all other recipients of a host's generosity. Our compulsory insurance law which requires every policy to afford uninsured motorist coverage to the insured defeats the hospitality argument upon which most prior cases have relied. If the hospitality justification were ever compelling, it has lost its force today. *Manistee Bank & Trust Co. v. McGowan*, 232 N.W. 2d 636 (Mich. 1975); *Cohen, et al. v. Kaminetsky, et al.*, 176 A. 2d 483 (N.J. 1961).

The "collusion prevention" rationale is similarly untenable. Although the guest statute may prevent some collusive suits between hosts and their passengers, the statute's overinclusiveness is devastating as it operates to bar the great majority of *valid* claims.

> " [T]he wholesale elimination of all guests' causes of action for negligence does not treat similarly situated persons equally, but instead improperly discriminates against guests on the basis of a factor which bears no significant relation to actual collusion." *Brown v. Merlo*, 506 P. 2d 212, 215 (Cal. 1973).

We believe the proper way to ferret out fraudulent actions is to impose existing civil law sanctions rather than to exclude an entire class of claims. Therefore, we cannot accept the premise that the supposed prevention of collusive lawsuits may justify a statute which bars meritorious litigation.

Having concluded the guest statute bears no rational relation to its ostensible purpose, the reasoning of *Marley v. Kirby, supra*, becomes apposite. In *Marley*, the South Carolina comparative negligence statute, Code §15-1-300 (1976), was held constitutionally defective on equal protection grounds due to its irrational limitation to motor vehicle accidents.[6]

[5]Code §55-1-10 applies the same limitations to aircraft; in this connection, see *Messmer, et al. v. Ker*, 524 P. 2d 536 (Idaho 1974).

[6]See *Wessinger v. Southern Ry. Co.*, 470 F. Supp. 930 (4th Cir. 1979).

We believe the guest statute is doubly onerous, as it is limited to motor vehicles and is accordingly defective under *Marley*, and it irrationally distinguishes non-paying guests from paying passengers.

We affirm the trial court's conclusion that Code §15-1-290 violates the equal protection guarantees of Article I, §3 of the South Carolina Constitution, and the Fourteenth Amendment to the United States Constitution and apply this holding with modified prospectivity to all similar pending and future actions.

LEWIS, C. J. and GREGORY, A. J., concur. LITTLEJOHN and RHODES, JJ., dissent.

LITTLEJOHN, A. J. (dissenting): I respectfully dissent and would reverse the order of the lower court.

Our guest statute was enacted by the legislature in 1930. It is an exact copy of one enacted by the legislature of Connecticut in 1927. See *Fulghum v. Bleakley*, 177 S.C. 286, 181 S.E. 30 (1935). In *Silver v. Silver*, 280 U.S. 117 (1929), the United States Supreme Court held the Connecticut statute constitutional. In *Cannon v. Oviatt*, 419 U.S. 810 (1974), the same Court summarily affirmed the Utah Supreme Court's decision upholding its guest statute. This court is bound, as to the federal Constitution, by the ruling implicit in the summary dismissal. See *Hicks v. Miranda*, 422 U.S. 332 (1975). I would hold that the statute does not violate the fourteenth amendment of the Constitution of the United States.

Article I, § 3 of the Constitution of South Carolina reads as follows:

> " § 3. Privileges and immunities; due process; equal protection of laws.
>
> "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law."

While the federal cases do not dispose of the equal protection claim under the South Carolina Constitution, they are entitled to much weight. See *In Re Hearing Before Joint Legislative Committee,* 187 S.C. 1, 196 S.E. 164, 118 A.L.R. 591 (1938).

The motion in this case, and the appeal before us, was apparently inspired by our recent holding in *Marley.*[1] While this case is of interest and is of some persuasion, it is not controlling because of the factual differences.

The issue is basically one of classification. The fundamental tenets regarding equal protection are easily enunciated but, quite often, difficult to apply. Clearly, equal protection does not forbid discrimination with respect to groups that are situated differently. 16 Am. Jur. 2d *Constitutional Law* § 488. A legislative classification should be (1) reasonable in light of the purpose of the legislation; (2) based on proper distinctions considering its purpose, and (3) not arbitrary or a subterfuge to unduly burden or oppress a particular group. 16 Am. Jr. 2d *Constitutional Law* § 494. The legislature enjoys wide discretion in enacting laws which establish classifications. A classification in a statute should be upheld if any set of facts reasonably can be conceived that would sustain it. *Morey v. Doud,* 354 U.S. 457 (1957). The burden of showing that a statute does not rest upon any reasonable basis is upon the one who attacks it, in this case the plaintiff.

In *University of South Carolina v. Mehlman,* 245 S.C. 180, 139 S.E.2d 771 (1964), this court reiterated a rule firmly established in this state:

> "We are called upon to pass upon the constitutionality of an Act passed by the General Assembly. In determining this question, it is a well settled rule in this State that a statute will, if possible, be construed so as to render it valid; that a legislative Act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond reasonable doubt; that every presumption will be made in favor of the constitutionality of a legislative enactment;

[1]Cited in majority opinion.

> that it will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution; that all reasonable presumptions must be made in favor of the validity of the Act; and that the Constitution of South Carolina is a limitation upon, rather than a grant of, legislative powers. *Clarke v. South Carolina Public Service Authority,* 177 S.C. 427, 181 S.E. 481; *Nolletti v. Nolletti,* 243 S.C. 20, 132 S.E.2d 11."

I would decline to hold that this statute, in existence for almost 50 years and heretofore uncontested, is repugnant to our constitution beyond a reasonable doubt. There is involved a policy consideration which the legislature had the right to determine.

Actions in tort basically involve a breach of duty. The duty owed by a defendant to a plaintiff depends in large part upon the relationship existing between the two. The relationship between the driver of a motor vehicle and a pedestrian is different from the relationship between the driver of a motor vehicle and a nonpaying guest. The relationship between the driver of a motor vehicle and a paying guest is also different. The legislature was entitled to consider the relationship between a driver and a nonpaying passenger in enacting the legislation here involved. Classification is primarily for the legislature, and the courts should not interfere unless classification is clearly unreasonable.

I agree with the Supreme Court of Connecticut in *Silver*[2], wherein it said:

> "There is inherent justice in the requirement that one who undertakes to perform a duty gratuitously should not be under the same measure of obligation as one who enters upon the same undertaking for pay, and the reason for a distinction between the measure of liability in the case of a gratuitous bailment and gratuitous transportation is not obvious. It seems to us that the Legislature was acting well

[2]*Silver v. Silver,* 108 Conn. 371, 143 A. 240 (1928).

within the limits of the police power in making a distinction between the degree of care to be exercised by the owner or operator of a motor vehicle toward a guest and that to be exercised toward one who pays for his transportation."

The duty owed a guest in various situations has always been slightly different from the duty owed to others. A landowner owes one duty to an invitee, but another duty to a licensee. Guests in airplanes are held to the same burden of proof as guests in automobiles. Code § 55-1-10.

The constitutional guarantee does not prevent classification, but requires that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation.

This statute was enacted at a time when motor vehicles were coming into popular use by the grest mass of people. Such use brought into existence a problem with which the legislature was entitled to deal. The statute, until this case, has remained constitutionally unchallenged before this court. The legislature has apparently been satisfied that the statute properly adjusts the rights of motor vehicle drivers and nonpaying guests.

I would hold that the South Carolina Guest Statute does not violate the equal protection clause of either the Constitution of the United States or the Constitution of South Carolina.

RHODES, A. J., concurs.

The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

October 11, 1979

P.O. BOX 11330
COLUMBIA, S.C. 29211

J. D. Todd, Jr., Esquire
Messrs. Leatherwood, Walker, Todd & Mann
P. O. Box 2248
Greenville, South Carolina 29602

Felix L. Finley, Jr., Esquire
Messrs. Finley, Ponder & Warlick
P. O. Box 543
Pickens, South Carolina 29671

Re: Ruby Ramey v. Williard C. Ramey

Gentlemen:

The Court has this day refused your Petition for Rehearing in the above case in the following order:

"Petition Denied.

s/ J. Woodrow Lewis C.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

We would grant the Motion.

s/ Bruce Littlejohn A.J.

s/ Wm. L. Rhodes, Jr. A.J."

The remittitur is being sent down today.

Very truly yours,

Frances

CLERK

FHS/rl

cc: Michael Parham, Esquire

ORDER OF COURT OF COMMON PLEAS
Pickens County, S.C.

This matter came before me on the tenth day of August, 1978 for a hearing on a Notice and Motion to Strike. The plaintiff was represented by Mr. Michael Parham of the Greenville Bar, and the defendant by Mr. Felix L. Finley, Jr. of Pickens.

From a review of the pleadings, it appears that the plaintiff has brought an action against the defendant seeking a recovery for injuries sustained in an automobile accident which occurred on or about October 17, 1977 at a time when the plaintiff was a passenger in the defendant's automobile, which was being operated by the defendant in Pickens County. The plaintiff alleged certain specifications of negligence, carelessness, recklessness, willfulness and wantonness on the part of the defendant. In his Answer, the defendant raised as a First Defense a qualified general denial, and further alleged in Paragraph II of his Answer as follows:

> "Defendant alleges that such accident was not intentional on defendant's part, and defendant denies that he was guilty of reckless, willful or wanton misconduct in the operation of his automobile within the meaning of the applicable South Carolina Guest Statute, Section 15-1-290 of the 1976 Code."

The plaintiff has filed a Notice and Motion to Strike the quoted material above. The basis for plaintiff's Motion to Strike was the alleged inherent, unconstitutionality of the South Carolina Guest Passenger Statute, Section 15-1-290 of the 1976 Code. The plaintiff alleges in his motion that this statute violates the Equal Protection Clause of Article 1, Section 3 of the South Carolina Constitution, and the Fourteenth Amendment to the United States Constitution, as it applies only to one class of individuals, those involved in motor vehicle accidents.

In argument, the plaintiff relied upon the recent case of *Marley v. Kirby,* Opinion No. 20715, filed June 19, 1978 in Smith's Advance Sheets. In *Marley,* the appellant challenged

the constitutionality of the South Carolina Comparative Negligence Statute, Code Section 15-1-300 on the grounds that said statute violated the Equal Protection Clause of the South Carolina and United States Constitutions. The appellant had brought suit against the respondent, Kirby, for injuries sustained in an automobile collision, and the respondent counterclaimed. The trial judge charged the Comparative Negligence Statute over appellant's objection, and the jury returned a verdict for the appellant in the sum of Three Hundred Twenty-Four and 95/100 ($324.95) Dollars, and for the respondent in the sum of Seven Hundred Twenty-Eight and 67/100 ($728.67) Dollars. In reversing and remanding the action for a new trial, the Court stated that the constitutional guarantee of Equal Protection of the Laws:

> . . . require that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." (Citations omitted). *Marley v. Kirby,* supra.

The Court found that while the General Assembly had the right to make reasonable classifications of persons and property for public purposes, however, these classifications could not be purely arbitrary, but must rest upon some reasonable basis.

Section 15-1-300, declared unconstitutional in *Marley,* was a statute which applied solely to "motor vehicles." In the same vein, Section 15-1-290 of the 1976 Code, commonly known as the Guest Passenger Statute, again applies solely to "motor vehicles."

There is no question but that the requirement of equal protection is not fulfilled unless the classification rests upon some difference which bears a reasonable and just relation to the legislative purposes sought to be effected. *U.S. Fidelity and Guaranty Company v. City of Newberry,* 257 S.C. 433, 186 S.E. 2d 239, (1972). In an argument based on the inherent unconstitutionality of the Guest Passenger Statute as that statute applies only to "motor vehicles", this Court, as in *Marley*, must find that there is no rational basis for separating injuries from motor vehicle accidents from injuries from other torts. This Court can find no rational justification for singling out

persons injured in automobile accidents as different from all others injured in negligent torts and can find no distinction between the reasoning and logic utilized in this case and that utilized in *Marley v. Kirby*. As the Court stated:

> "The authority of the General Assembly to control the operation of vehicles on the highways and to require operators to carry insurance is an unquestioned proper exercise of the police powers; yet the extension of that power to alter a substantive rule of negligence law with respect to one class of persons is improper."

As this Court finds above that the South Carolina Guest Passenger Statute, Section 15-1-290 of the 1976 Code of Laws is unconstitutional as violative of the Equal Protection Clause of the South Carolina and United States Constitutions the Court has no alternative but to allow plaintiff's motion to strike. Recognizing this decision may have far reaching effects in the Courts of this State, this Court certifies the issue for immediate appeal to the Supreme Court of the State of South Carolina, and all further proceedings in the trial court shall be stayed until a decision may be had.

IT IS SO ORDERED.

ROBERT W. HAYES, *Judge*
The Court of Common Pleas

Greenville, South Carolina
August 15, 1978